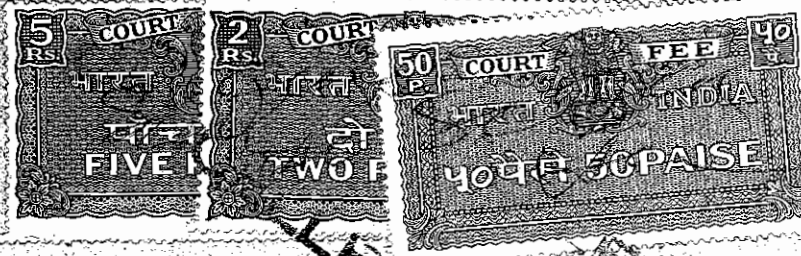


C-41



Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRIMINAL APPEAL NO. 108 OF 1990

Paklibai alias Chandan Kunwar Bai, wife of
Sidar Singh Gond, aged 35 years, resident of
Karmahu, P.S. Akaltara, district Bilaspur, M.P.

APPELLANT
(ON BAIL)

VERSUS

THE STATE OF MADHYA PRADESH.

RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE
CODE OF CRIMINAL PROCEDURE.

CONVICTION
U/S 306 IPC

SENTENCE
R.I. FOR 3 yrs.

22.1.90
Mukesh Pandey

22.1.90

It is requested that the appellant be allowed to prefer

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.108/1990

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Pakli Bai @ Chandan Kunwar Bai

Versus

State of Chhattisgarh

Shri Arun Kochar, learned counsel for the appellant.

Ms. Sunita Jain, learned Panel Lawyer for the State.

JUDGMENT

(Passed on 18th of April, 2006)

This appeal is directed against the judgment dated 6.01.1990 delivered by Shri J.M. Bhagat, 2nd Addl. Sessions Judge to the Sessions Judge, Bilaspur in sessions case No. 136/87 whereby the appellant was convicted under Section 306 I.P.C. and was sentenced to rigorous imprisonment for 3 years.

2. Briefly stated the prosecution is that the deceased Amrika Bai was the wife of Leelaram, brother of the appellant. The appellant used to level an insinuation that Amrika Bai was spoiling the life of her brother Leelaram as she had illicit relationship with one Eshwar Singh, brother of Leelaram. On 25.4.1986, a quarrel ensued upon this matter. Leelaram scolded Amrika Bai. Upon this, Amrika Bai committed suicide on the next day at 6 A.M by pouring kerosene over her body and setting

herself ablaze. Nobody was present in the house at that time. Her dying declaration was recorded on the same day by Chenchayam Das P.W. 2 vide Ex.P.4 wherein Annika Bai narrated the above facts. Annika Bai died on the same day i.e. 26.4.1986. Post mortem was conducted on 27.4.1986 and it was opined that her death was due to suffocation as a result of extensive burns. After completion of investigation, the appellant was prosecuted under Section 306 IPC. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 6 witnesses. Relying upon the evidence led by the prosecution, the trial Court convicted and sentenced the appellant as aforesaid in para 1.

3. Shri Arun Kochhar, learned counsel for the appellant has argued that even if the entire evidence led by the prosecution is accepted at its face value, the offence under Section 306 IPC is not proved against the appellant since there is nothing on record to show that the appellant had instigated the commission of suicide by Annika Bai. On the other hand, Ms. Sunita Jain, learned Panel Lawyer argued in support of the impugned judgment.

4. Having heard the rival contentions, I have perused the record. In Rakesh Vaishnav Vs. State of Madhya Pradesh 2004(1) C.G.L.J. 324 it was held that in order to establish the offence under Section 306, the instigation must be so direct, co-related, immediate and proximate with the act of suicide that

it can be safely inferred that the deceased committed suicide only on account of instigation, inducement, abetment and provocation given by the accused. *Mens rea* is a necessary ingredient. The prosecution, in order to establish the guilt under Section 306 IPC against the appellant is thus required to establish that the suicide committed by Amrika Bai on 26.4.1986 was a direct, proximate and co-related result of the instigation of the appellant. Amrika Bai had, soon after the occurrence, in her dying declaration had stated that since Pakli Bai had quarreled with her upon an allegation that she has illicit relationship with Eshwar Singh, she had committed suicide. Apart from this, there is absolutely no evidence against the appellant. Merely because, the appellant had quarreled with the deceased a day before the occurrence and had alleged illicit relationship of the deceased with Eshwar Singh, it cannot be said that the appellant had instigated or abetted the commission of suicide by Pakli Bai.

5. In Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh (2002) Supreme Court Cases (Cri) 1141 the Hon'ble Apex Court has held that "Instigating a person to do a thing denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea* is the necessary concomitant for instigation. Where the quarrel took place between the appellant and deceased in which appellant was said to have told the deceased "to go and die" and the deceased

was found dead two days later, it could not be held that the suicide was proximate to the quarrel even though the deceased was named in the suicide note. In the present case, there is even no such allegation that the appellant had asked the deceased to go and commit suicide. Therefore, merely because a day before the occurrence, there was a quarrel in which the appellant is alleged to have levelled an insinuation against the deceased of having illicit relationship with Eshwar, it cannot be said that the appellant instigated or abetted the commission of suicide by Amrika Bai. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the prosecution has failed to establish the guilt under Section 306 of IPC against the appellant.

5 In the result, the appeal is allowed. The conviction of the appellant under Section 306 IPC and the sentence awarded thereunder is set aside. The appellant is acquitted. Her bail bonds shall stand cancelled.

Sd/-
Dilip Raosaheb Deshmukh
Judge